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OFFICE OF PETITIONS

In re Patent No. 7,657,336	: DECISION ON REQUEST
Rao et al.	: FOR
Issue Date: 02/02/2010	: RECONSIDERATION OF
Application Number: 10/717,418	: PATENT TERM ADJUSTMENT
Filing or 371(c) Date: 11/19/2003	:
Atty Docket No.	:
15145US02	:

This is a decision on the REQUEST FOR RECONSIDERATION OF USPTO RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH*, filed on June 10, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand seven hundred fifty-eight (1758) days.

The petition to correct the patent term adjustment is **DISMISSED** with respect to making any change in the patent term adjustment determination under 35 U.S.C. § 154(b) of one thousand seven hundred fifty-five (1755) days.

The petition is unsigned. In this regard, the /s/ signature is improper because no slash mark has been provided after the signature. See 37 CFR 1.4(d)(2)(i).

Petitioners assert (a) that a two (2) day period of reduction for applicant delay pursuant to 37 CFR 1.704(b) for the filing of a reply to an Office action on June 30, 2008, three months and two (2) days after the Office action was mailed on March 28, 2008, is incorrect and should be removed; and (b) that the period of reduction for applicant delay pursuant to 37 CFR 1.704(c)(10) associated with the filing of an amendment or other paper filed after the mailing of a notice of allowance, filed on December 16, 2008, should be 48 days rather than 49 days as assessed by the Office.

With regard to the two (2) day period pursuant to 37 CFR 1.704(b), 35 U.S.C. 154(b) provides for patent term adjustment for examination delay. Pursuant to 35 U.S.C. 154(b)(3)(B) and implementing regulation 37 C.F.R. § 1.705, an applicant shall receive an initial determination of

patent term adjustment with the mailing of the Notice of Allowance and shall be given one opportunity to request reconsideration of that determination by way of filing of an application for patent term adjustment prior to the payment of the issue fee.

On September 16, 2009, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 1128 days. This determination was based in part on the period of reduction of two (2) days associated with the reply filed on June 30, 2008, three months and (2) days after the Office's mailing of a first Office action on March 28, 2008. PALM records indicate that the issue fee payment was received in the Office on December 16, 2009. No filing of an application for patent term adjustment preceded the payment of the issue fee. The period for filing an application for patent term adjustment requesting reconsideration of the initial determination of patent term adjustment at the time of mailing of the notice of allowance ended December 16, 2009. Accordingly, it is appropriate to dismiss this petition as untimely filed under 1.705(b).

Consideration under 1.705(d) is not appropriate. As stated in MPEP 2730, 1.703(d) provides that:

If there is a revision to the patent term adjustment indicated in the notice of allowance, the patent will indicate the revised patent term adjustment. If the patent indicates or should have indicated a revised patent term adjustment, any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued and must comply with the requirements of paragraphs (b)(1) and (b)(2) of this section. Any request for reconsideration under this section that raises issues that were raised, or could have been raised, in an application for patent term adjustment under paragraph (b) of this section shall be dismissed as untimely as to those issues.

The issue raised should have been timely raised on application for patent term adjustment under § 1.705(b).

Further, with regard to the assertion that the period of reduction under 37 CFR 1.704(c)(10) should have been 48 days rather than 49 days, pursuant 35 U.S.C. 154(b)(3)(B) and implementing regulation 37 CFR 1.705(d), any request for reconsideration of the patent term adjustment indicated on the patent must be filed within two (2) months of the date the patent issued.

On January 13, 2010, the Office mailed the revised Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent was projected to issue on February 2, 2010, and that the patent term adjustment to date was 1086 days. This determination was based in part on the period of reduction for applicant delay pursuant to 37 CFR 1.704(c) of 49 days for the filing of an amendment or other paper filed after the notice of allowance. On December 16, 2009, an amendment and drawings were filed after the mailing of the notice of allowance. On February 2, 2010, 49 days after the amendment was filed, the application issued as U.S. Patent No. 7,657,336. No request for reconsideration under 37 CFR 1.705(d) was filed within two (2) months after the date the patent issued. As the subject request for reconsideration was not filed until June 10, 2010, which is over two (2) months after

the date the patent issued, it is appropriate to dismiss this petition as untimely filed under § 1.705(d).

Submission of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3231.

A handwritten signature in black ink, appearing to read "D. Wood", is positioned above the printed name.

Douglas I. Wood  
Senior Petitions Attorney  
Office of Petitions